

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE
IN RE: PIER WEST CAPITAL, INC.

STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION	
In re: Loan Modification Solutions Respondent: Pier West Capital, Inc. A California Corporation	
JOHN W. SUTHERS, Attorney General ANDREW P. McCALLIN, First Assistant Attorney General 1525 Sherman Street, 7 th Floor Denver, CO 80203 Phone: (303) 866-5134 Fax: (303) 866-4916 Email: Andrew.McCallin@state.co.us	
ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE WITH PIER WEST CAPITAL, INC. A CALIFORNIA CORPORATION	

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into between the State of Colorado, ex rel. John W. Suthers, Attorney General and Respondent Pier West Capital, Inc., a California corporation. This Assurance is entered into pursuant to the Attorney General's powers under § 6-1-110(2), C.R.S. (2008), and is being agreed to by the parties in lieu of the Attorney General filing a complaint against Respondent for the conduct described below.

I. PARTIES

1. John W. Suthers is the duly elected Attorney General for the State of Colorado ("Attorney General") and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act ("CCPA"), §§ 6-1-101, *et seq.*, C.R.S. (2008).

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2. Respondent Pier West Capital, Inc., a California corporation (“Respondent” or “Pier West Capital”) has its principal place of business at 1001 Ave Pico, Suite 261, San Clemente, California 92673. The Registered agent is Matthew J. Davis, 100 Paseo Vista, San Clemente, CA 92673.

II. FACTUAL BACKGROUND

3. Pursuant to the CCPA, Colorado Attorney General John W. Suthers has conducted an investigation into the business practices of Respondent.

4. Pier West Capital is not registered with the Colorado Secretary of State as foreign entity authorized to do business in the State of Colorado.

A. Respondent’s Agents Acted as Mortgage Brokers Without Proper Licenses.

5. The Director of the Division of Real Estate has determined that “persons who directly or indirectly negotiate, originate *or offer or attempt to* negotiate or originate loan modifications for a borrower and for a commission or other thing of value are required to be licensed as mortgage brokers.” (Ex. B, Division of Real Estate, Position Statement MB 1.5 – Loan Modifications, Nov. 19, 2008.) (Emphasis added.) Additionally, “persons who directly supervise individuals who negotiate, originate, *or offer or attempt to* negotiate or originate loan modifications for a commission or other thing of value are required to be licensed as mortgage brokers.” (*Id.*) (Emphasis added.)

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6. Respondent, including but not limited to employees, independent contractors, brokers, salespersons and/or agents of Pier West Capital have offered to negotiate or originate loan modifications for Colorado consumers.

7. Respondent, however, does not have employees or independent contractors who are licensed as mortgage brokers by the Colorado Division of Real Estate.

8. As such, the Attorney General contends that Respondent and its agents offered to negotiate loan modifications without mortgage broker licenses in violation of §§ 6-1-105(1)(u), (z) and 12-61-903(1)(a), C.R.S. (2008).

III. CONSIDERATION

9. Respondent enters this Assurance as a compromise and settlement of the Attorney General's allegations herein. This Assurance shall not be considered an admission of violation for any purpose. Respondent expressly denies liability under the CCPA and is entering into this Assurance to avoid further costs and litigation.

10. The Attorney General intends that this Assurance will finally and fully resolve all of the disputes between the Attorney General and Respondent arising out of the conduct alleged in Section II, Factual Background, of this Assurance.

IV. ASSURANCES

11. Respondent will not target advertisements directly to Colorado consumers.

12. The term "advertisements" includes all advertisements, marketing or promotional materials issued by Respondent, including but not limited to, newspaper and magazine

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advertisements, direct mail solicitations, flyers, brochures, emails, faxes, telemarketing, billboards, envelopes, and banner or pop-up advertising that is disseminated electronically.

13. Respondent shall comply with the CCPA as now constituted or as may be amended in conducting business in the State of Colorado; the federal Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* ("TILA"); the Uniform Consumer Credit Code, §§ 5-1-101 through 5-13-105, C.R.S. (2008) ("UCCC"); and the Colorado Mortgage Broker Licensing Act, §§ 12-61-101, *et seq.*

14. Respondent shall comply with all applicable rules and regulations implementing the laws set forth in the preceding paragraph.

V. ENFORCEMENT

15. The obligations set forth in this Assurance are continuing under this Assurance.

16. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with § 6-1-110(2), C.R.S. (2008). Upon a violation of any of the terms of this Assurance by Respondent, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

17. In addition to any remedies provided under the CCPA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against Respondent as if the parties

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had fully litigated all issues contained herein, upon a showing by the Attorney General of a violation by a Respondent of this Assurance. In such event, Respondent agrees to waive any and all defenses and counterclaims they may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

18. This Assurance shall not be construed to affect the rights of any private party to pursue remedies pursuant to § 6-1-113, C.R.S. (2008), or under any other statutes through claims or actions in common law.

19. Nothing in this Assurance shall be construed to release claims held by any other governmental authority.

20. Pursuant to § 6-1-110(2), C.R.S. (2008), this Assurance shall be a matter of public record.

21. This Assurance may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute the Assurance.

22. The person who signs this Assurance in a representative capacity for the Respondent warrants that he or she is duly authorized to do so. Respondent acknowledges that they have had a full opportunity to review this Assurance and consult with legal counsel regarding same. Respondent agrees and represents that they have read and understand this Assurance, that they accept the legal consequences involved in signing it, and that there are no other representations, agreements or understandings between Respondent and the Attorney General that are not stated in writing herein.

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23. Respondent and their principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, contractors, and any person acting on behalf of any Respondent agrees to cooperate with all investigations and other proceedings that the Attorney General may bring to enforce the terms of this Assurance or to enforce the CCPA against any other entity. Included within this cooperation agreement are the obligations to:

- a) Appear for hearings or depositions, so long as Respondent is not required to travel more than 20 miles from his residence, or provide testimony in any form, including affidavits. All such testimony shall be truthful;
- b) Produce documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the Attorney General; and
- c) Accept a subpoena from the Attorney General without the need for service of process.

24. Any notices, complaints or other documents required by this Assurance (including any request or subpoena) shall be sent to the following individuals at the address, email or fax set forth below:

To Respondent: Pier West Capital, Inc.
Matthew Davis
1001 Ave Pico #261 San Clement, CA 92673
Email: Matt@pierwestcapital.com
Phone: 949-677-3156
Fax: 866-607-7784

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To The Attorney General at:

Andrew McCallin
First Assistant Attorney General
Antitrust, Tobacco, and Consumer Protection Unit
Consumer Protection Section
1525 Sherman Street – 7th Floor
Denver, CO 80203
Email: Andrew.McCallin@state.co.us
Phone: (303) 866-5134
Fax: (303) 866-4916

Dated: 10/26/09

RESPONDENT:

Pier West Capital
By: M. Davis
Matt Davis, President
Print Name and Title

Dated: 11/3/09

JOHN W. SUTHERS
Attorney General

Andrew McCallin
ANDREW MCCALLIN
First Assistant Attorney General
Consumer Protection Section